

# Focus

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## Attorney General's Opinion on Exempt Ground Water Withdrawals

### Background

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Washington water law requires prospective water users to obtain a water right permit from the Washington Department of Ecology before constructing a well or withdrawing any ground water from a well. However, the law (*RCW 90.44.050*) provides the following exemption from the requirement to obtain a permit for certain small-scale ground water uses:

*“... any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section...”*

### Issue

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The Washington State Office of the Attorney General recently issued a formal legal opinion regarding exempt ground water withdrawals in response to a request by the Departments of Ecology and Health. The agencies made this request because there have been differences of opinion among various parties about the intent and meaning of the ground water right exemption. The agencies decided that the resulting confusion could best be addressed and clarified by an opinion from the Attorney General.

Ecology was also concerned that misuse of the exemption could harm senior, existing water rights and ground water resources. In addition, the agencies were concerned that some of the increased use of non-permitted wells could be contrary to legislative intent and could result in a large number of unauthorized uses of water that could harm waters in streams for fish and aquatic life.

The opinion is very important for Washington citizens and our environment. Our state is fast running out of cheap, available water for people, farms, and fish. We have current and pending threatened and endangered listings for salmon and steelhead in our state. All of this points to how critical it is for our local communities and the state to carefully plan for water use.

The opinion has five main components:

- If you want to develop land and use more than 5,000 gallons of ground water per day, then, you need to apply for a water right permit from Ecology. A project needs a permit if it will require more than 5,000 gallons of water per day, regardless of how many wells will be used.

- The law does not allow water wells or systems without a permit to join together or intertie, except under specific circumstances. Washington law does allow wells with permits to connect or intertie. It also allows a water system with a permit, under certain circumstances, to consolidate into its system exempt wells that become a part of its system.
- A person with an exempt well may apply for a water right permit. Ecology must review applications for water right permits, even exempt uses of water. The following criteria used in water right decisions are defined in *RCW 90.03.290*:

*“...if it shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare...”*

- Ecology may not issue a water right certificate to someone with a water use that doesn't need a permit, unless the owner of the well obtains a permit from Ecology; or the owner of the well consolidates his/her right with a right covered by an existing permit or certificate.
- Washington law does not allow an owner of a well that doesn't need a permit, to transfer or change his/her withdrawal of water to a different location or for a different purpose, such as changing the use of the water from domestic-home use to industrial. However, the owner of the exempt water well could obtain a transfer or change to his/her withdrawal if he/she does one of the following actions: obtains a permit from Ecology or consolidates his/her water right with a permit or certificate.

In response to the Attorney General Opinion, Ecology is urging people who are developing property that will be using more than 5,000 gallons of ground water per day to apply for a water right permit. Landowners using multiple wells withdrawing more than 5,000 gallons of water per day for a single development project should apply for a water right permit. Ecology will work with landowners and local communities to identify alternatives for getting water to accommodate the continued population growth in our state while still protecting our aquatic resources.

### **For More Information**

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To find out more about the Attorney General's Opinion on exempt ground water use or to request a copy, contact Doug McChesney, Department of Ecology, Water Resources Program, PO Box 47600, Olympia, WA 98504-7600, (360) 407-6647, or [dmcc461@ecy.wa.gov](mailto:dmcc461@ecy.wa.gov). This focus sheet can be accessed through Ecology's homepage on the World Wide Web. The address is: <http://www.wa.gov/ecology/>. You may also get a copy of the opinion at: [http://www.wa.gov/ago/opinions/opinion\\_1997\\_6.html](http://www.wa.gov/ago/opinions/opinion_1997_6.html).

If you have special accommodation needs, please contact Felicia Curtis at (360) 407-6691 or (360) 407-6006 TDD.

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